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STATE OF NORTH DAKOTA

From: Nelson, David
Sent: Friday, October 08, 2010 10:44 AM
To: (SUP) Clerk of Court Office
Subject: Proposed amendments

I am writing to oppose two of the proposed changes.

This applies to changes in Civil Rule 47 and Criminal Rule 24.

In the past the rules for impaneling the jury had the permissive “may” when describing the method of seating the jury. The Civil Rule change was at the request of a civil litigation lawyer, who had a trial with me and did not like our method. By a narrow vote in Joint Procedure, almost entirely with a split of judges vs lawyers, the new version, changing the ”may” to “must”, as to the civil rules was passed.

That new language was then added by the staff lawyer to the criminal rules at no one’s request. I managed to convince the committee to not remove the “may” as to a 6-person jury, but failed in my attempt to keep the “may” as to a 12-person jury. Ironically, I was the member that had made the motion for the rule change, not realizing the staff change, and its implications. Again, this change was not requested by anyone. Staff simply copied the new civil rule language, assuming it was what we wanted.

This may seem like an insignificant change, but it has a major effect on the Court’s docket.
Instead of calling 12 prospective jurors to a box and questioning only those twelve, in Williams, Divide and McKenzie Counties, we swear in the entire panel and have the lawyers address the group as a whole.
The process we use was developed by Judge Beede and has done us well for many years.

In cases where I do not have to do an individual voir dire I can have a jury picked by 10:30 AM on the first day of trial. We do openings that morning, and will sometimes start with witnesses before noon. We usually have the case to the jury by 3:00 or 4:00 PM and finish that day.

Under the 12-in-the-box system, which is mandated by the change to “must”, we are lucky to have the jury picked by lunch, and will usually need an extra day for picking a jury.

The “may” language that was in the rules prior made it possible for courts to improvise changes, or keep the old way, at the discretion of the judge. This rule change puts the method of selection in the hands of the lawyers, and I believe it is the judge’s preference that should prevail.

I am less concerned about the civil change, as those trials are usually multi-day anyway. But to change this rule as to criminal cases will demand 2 days for trials that would otherwise be done in 1 day.

As many judges have said, we are not necessarily overworked, but we are certainly over scheduled. To force us to take these days out of our schedule is an unnecessary burden on an already full schedule.

I do not like the civil rule, but I can live with it if you so choose. But the criminal change was not requested by anyone, and is a major imposition on the court's calendar, for no benefit.

Sincerely
David W. Nelson